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Conflict of Laws - Foreign Chattel Mortgage Not Recorded in Louisiana - Rights of Innocent Purchaser

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clares null only those obligations based on a potestative condition on the part of the obligor.⁸ The mortgagee who is allowed the option is not the obligor, but the obligee. Furthermore, the opinion is inaccurate in declaring the *potestative condition* null, for Article 2034 provides only that the *obligation* contracted on a potestative condition is null. This provision confers no authority therefore, for annulling a potestative condition which makes part of an enforceable contract.⁹

The better reasoned cases at common law have required a reasonable insecurity before permitting the mortgagee to foreclose.¹⁰ There is nothing in our Code requiring a different result, nor would public policy be offended by allowing to mortgagees the protection of such an option if it is relied on only when the circumstances warrant its use.

W. M. S

CONFLICT OF LAWS—FOREIGN CHATTEL MORTGAGE NOT RECORDED IN LOUISIANA—RIGHTS OF INNOCENT PURCHASER—Plaintiff, the assignee of a Missouri vendor, seeks to enforce a chattel mortgage given on an automobile which the Missouri vendee subsequently removed to Louisiana. The defendant purchased the car in Louisiana, and gave in payment therefor a note secured by a chattel mortgage. Both chattel mortgages were valid under the laws of their respective states. The present holder of the Louisiana mortgage intervened, contending that the Missouri mortgage had no effect in Louisiana because it had not been recorded here. *Held*, that in the absence of recordation in this state the Missouri mortgage has no effect against a third party purchaser in good faith. Judge Janvier dissented on the ground that a chattel mortgage valid against third parties in the state where it was given was also valid in Louisiana. *General Motors Acceptance Corp. v. Nuss*, 192 So. 248 (La. App. 1939).

In cases involving conditional sales contracted in another jurisdiction, recovery by the vendor is allowed if at the time of execution it was not contemplated that the property would be

8. *Conques v. Andrus*, 162 La. 73, 110 So. 93 (1926); *La Salle Extension University v. Thibodaux*, 155 So. 53 (La. App. 1934); *Gumbel Realty and Securities Co. v. Levy*, 156 So. 70 (La. App. 1934).

9. *Brown, Potestative Conditions and Illusory Promises* (1931) 4 *Tulane L. Rev.* 396-439.

10. See note 4, *supra*.

removed to this state.¹ This is based on the idea that the original vendee did not acquire *title* in the first transaction and, consequently, can convey no better title after removal of the property to this state.² When it is contemplated that the property under a conditional sale agreement is to be removed to Louisiana, protection is given in Louisiana to an innocent purchaser by virtue of Article 10³ which provides that a contract is to be interpreted according to the laws of the place where it is to have effect.

With regard to chattel mortgages the common law is fundamentally different from the civil law. In the former, the mortgagee has a qualified ownership conferred upon him;⁴ while in the civil law, the mortgage confers no title to or in the property, but only a qualified privilege.⁵ However, most common law states now regard a mortgage as a mere lien and not as a conveyance in effect, although cast in the form of a conveyance.⁶ Therefore a chattel mortgage cannot be analogized to a conditional sale in

1. Overland Texarkana Co. v. Bickley, 152 La. 622, 94 So. 138 (1922); Securities Sales Co. v. Blackwell, 167 La. 667, 120 So. 45 (1929); Finance Sec. Co. v. Conway, 176 La. 456, 146 So. 22 (1933); Hinton Company v. Rouse, 4 La. App. 471 (1926). Cf. Art. 10, La. Civil Code of 1870. See also Comment (1940) 2 LOUISIANA LAW REVIEW 333, 343-344, where the cases are collected.

2. See cases cited in note 1, supra. The common law jurisdictions seem to have had considerable difficulty on this point. Contrast: Marvin Safe Co. v. Norton, 48 N.J. Law 410, 7 Atl. 418, 57 Am. Rep. 566 (1886); Charles T. Dougherty Co. v. Krimke, 105 N.J. Law 470, 144 Atl. 617 (1929), noted in (1929) 38 Yale L. J. 988. Some states make surreptitious removal the test. Egerly v. Bush, 81 N.Y. 199 (1880); Goetschius v. Brightman, 245 N.Y. 186, 156 N.E. 660 (1927). The Texas policy is that if the property is removed to that state, whether with or without the consent of the mortgagee or conditional vendor, the innocent purchaser from the mortgagor or conditional vendee, or his attaching creditor, prevails unless the mortgage or conditional sale had been recorded in Texas. Best v. Farmers' and Merchants' Bank, 141 S.W. 334 (Tex. Civ. App. 1911); Consolidated Garage Co. v. Chambers, 111 Tex. 293, 231 S.W. 1072 (1921). If the chattel is removed out of Texas, the fact that a good faith purchaser bought the chattel in Texas after removal of the chattel, burdened with a mortgage, into Texas from another state, will be considered as clearing the defect in the possessor's title. Hart v. Oliver Farm Equipment Sales Co., 37 N.M. 267, 21 P. (2d) 96, 87 A.L.R. 962 (1933). However some states refuse to recognize a clear title on grounds of reciprocity. Brock v. Cupples (La. App. unreported), noted in 2 So. L. Q. 146 (1916); Forgan v. Bainbridge, 34 Ariz. 408, 274 Pac. 155 (1928). Cf. Uniform Conditional Sales Act, §§ 5, 6, 9, and 13.

3. Art. 10, La. Civil Code of 1870. Finance Security Co., Inc. v. Mexic, 188 So. 657 (La. App. 1939), noted in (1939) 14 Tulane L. Rev. 122.

4. Blake v. Corbett, 120 N.Y. 327, 24 N.E. 477 (1890); In re Packard Press, 5 F. (2d) 633 (C.C.A. 2nd, 1925); In re Ulrop-Huff Co., 9 F. (2d) 922 (D.C. N.Y. 1925).

5. Art. 3278, La. Civil Code of 1870. Miller v. Shotwell, 38 La. Ann. 890 (1886).

6. Art. 2920, Cal. Civ. Code (1872). McMillian v. Richards, 9 Cal. 365 (1858); Williams v. Purcell, 45 Okla. 489, 145 Pac. 1151 (1915); West v. Middlesex Banking Co., 33 S.D. 465, 146 N.W. 598 (1914); Union Machinery and Supply Co. v. Darnell, 89 Wash. 226, 154 Pac. 183 (1916).

order to argue that the mortgagor can convey no title in Louisiana.⁷

Louisiana was very cautious in adopting the chattel mortgage;⁸ and even after it was enacted an innocent purchaser was protected by the requirement that there be recordation in every parish in which the chattel should be taken.⁹ This local policy may have been in the mind of the court when a foreign mortgagee was denied recovery on a mortgaged chattel brought into this state and sold to an innocent purchaser;¹⁰ for in a subsequent case, where no third person was involved, an out of state chattel mortgage was given effect although not recorded within the state.¹¹

The question posed in the principal case is whether this settled Louisiana policy has been affected by the 1936 Chattel Mortgage Act¹² which provides that for a chattel mortgage executed *within the state* to affect third persons without notice the mortgage need be recorded only in the parish where executed and at the domicile of the mortgagor. In conformity with Louisiana jurisprudence prior to the 1936 Act, the majority of the court decided that a bona fide purchaser of property burdened with a foreign chattel mortgage not recorded within the state should be protected. Despite this consistency of policy, it is submitted that the court in the instant case might have very easily decided otherwise, thus bringing Louisiana in line with the great majority of the states.¹³

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7. See cases cited supra, note 1. Missouri has specifically disclaimed any title in the mortgagee. *Adamson v. Fogelstrom*, 221 Mo. App. 1243, 1247, 300 S.W. 841, 843 (1927): "The rule in this state is that a chattel mortgage creates a lien on the property pledged, and the legal title as well as the right of possession to the property covered by the mortgage, before condition broken, is in the mortgagor."

8. La. Act 65 of 1912, as amended by La. Act 155 of 1914; La. Act 18 of 1915 (E.S.); La. Act 151 of 1916; La. Act 198 of 1918; La. Act 81 of 1922; La. Act 232 of 1924; La. Act 189 of 1932; La. Act 178 of 1936 [Dart's Stats. (1939) §§ 5022-5033]. See also La. Act 119 of 1924 [Dart's Stats. (1939) § 5034] and La. Act 157 of 1918 [Dart's Stats. (1939) §§ 5035-5036]. Prior to the passage of the first chattel mortgage act Louisiana accorded no recognition to chattel mortgages of other states. *Delop v. Windsor*, 26 La. Ann. 185 (1874).

9. *Wilson v. Lowrie*, 156 La. 1062, 101 So. 549 (1924); *Gulf Finance and Securities Co. v. Taylor*, 160 La. 945, 107 So. 705 (1926).

10. *Brock v. Cupples* (La. App. unreported), noted in (1917) 2 So. L. Q. 147; *Devant v. Pecou*, 13 La. App. 594, 128 So. 700 (1930).

11. *Harnischfeger Sale Corp. v. Sternberg Co.*, 179 La. 317, 154 So. 10 (1934).

12. See note 8, supra.

13. *Davis v. Standard Accident Ins. Co.*, 35 Ariz. 392, 278 Pac. 384 (1929); *Creelman Lumber Co. v. Lesh and Co.*, 73 Ark. 16, 83 S.W. 320 (1904); *Mercantile Acceptance Co. v. Frank*, 203 Cal. 483, 265 Pac. 190, 57 A.L.R. 696 (1928); *Mosko v. Matthews*, 87 Colo. 55, 284 Pac. 1021 (1930); *General Credit*